IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 24TH NOVEMBER 2006 / 3RD AGRAHAYANA 1928

Cus.Appeal.No. 7 of 2005()

APPEAL NO.37/2003 of CUSTOMS, CENTRAL EXCISE& SERVICE TAX APPELLATE TRIBUNAL,BANGALORE

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APPELLANT

M/S.MALABAR ENTERPRISES,
VII/367, KUMARANELLOOR P.O.,
VADAKKANCHERRY, THRISSUR, PIN-680 590,
REPRESENTED BY ITS PROPRIETOR,
A.H.ABOOBACKER.

BY ADV. SRI.C.K.KARUNAKARAN
SRI.C.E.UNNIKRISHNAN

RESPONDENTS:
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1. THE CUSTOMS, CENTRAL EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SOUTH ZONAL BENCH, BANGALORE.

2. COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, COCHIN-9.

3. UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE, DEPARTMNT OF REVENUE, NEW DELHI.

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG

THIS CUSTOMS APPEAL HAVING BEEN FINALLY HEARD ON 24/11/2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & K.P.BALACHANDRAN,JJ.

CUSTOMS APPEAL.NO.7 OF 2005

Dated this the 24th day of November, 2006

JUDGMENT

Raman,J.

This is an appeal against the order of the Customs, Excise and Service Tax Appellate Tribunal, Bangalore Bench dated 19th May, 2005. The appellant imported Compact Fluorescent Lamps (CFL)from China as per the bill of entry filed on 28/12/2001. They were assessed duty of customs on 31/12/2001 and the appellant accordingly paid duty as assessed and cleared for the home consumption. Subsequently, the assessee received a notice, according to him, in July 2002 stating that as on the date of assessment of duty, the anti-dumping duty payable by the appellant was not included for the purpose of assessment. In

other words, there was a short levy of anti-dumping duty on the goods. The appellant filed the case before the authorities below inter alia contending that the notice issued was received only in July, 2002, beyond a period six months from the relevant date. As such, it is barred by limitation as prescribed under Section 28(1) of the Customs Act. In the order of the Tribunal impugned in this appeal, it was found that notice was proved to have been despatched on 17/5/2002 for which purpose the Tribunal relied on the extract from the despatch register for postal dak. Therefore, in the normal course of events, this would have reached the assessee within a period of 7 to 10 days. The appellant admitted the fact of receipt of notice. But according to him, it was received belatedly. Thus he admits the

receipt of notice. If it is received according to him belatedly, the burden is entirely on him to prove the same by producing cogent evidence either by producing the cover or by any other independent evidence. Not even an affidavit was filed by him in this regard as recorded by the authority below. Thus, there was absolutely no evidence at all on the part of the appellant to establish his case that he received the notice only in July, 2002. In those circumstances, the Tribunal held that notice has been served within the period of limitation, i.e. in May, 2002. The correctness of the view of the Tribunal is canvassed in this appeal.

2. We have heard the parties. We have also gone through the order of the Tribunal.

3. The learned counsel appearing for the

appellant, however, submitted that the despatch register referred to and relied upon by the Tribunal was not produced or relied upon before any of the lower authorities. Further, the stand taken by the department in the earlier stages was that the notice was served on the Customs House Agent and therefore, he had no opportunity to adduce any contra evidence. The question as to whether the notice was received by the appellant belatedly is certainly an issue which he raised from the very beginning before the first Appellate Authority. Whatever best evidence he had to support his case ought to have been produced by him at that stage or at any rate before the appellate stage. He need not await respondents to produce the depatch register so as to enable him to get further

opportunity to produce whatever evidence which he had in his possession. We are unable to appreciate the contention in this regard.

4. The Tribunal, after appreciating the evidence on record, has come to the conclusion that the appellant was not able to prove that the notice was actually served on him belatedly. This is a question of fact. At any rate, there is no substantial question of law arises for consideration in this appeal on this count and the finding by the Tribunal cannot be interfered with. But undisputably, the appellant has raised various other contentions before the Appellate Tribunal. But the Appellate Tribunal disposed of the appeal only based on the issue regarding limitation and did not enter any finding on the other contentions so raised by the appellant. Thus,

there was no proper disposal of the appeal filed by the appellant on all the contentions raised as above.

5. In this view of the matter, we allow this appeal and remand the case to the Tribunal for fresh disposal in accordance with law on the other issues. We make it clear that the finding already entered by the Tribunal on the question of limitation stands confirmed.

P.R.RAMAN,
Judge.

K.P.BALACHANDRAN,
Judge.

kcv.